
A BILL FOR AN ACT

RELATING TO UNOCCUPIED RESIDENTIAL PROPERTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Hawaii has one of the longest foreclosure
2 processes in the country. As of the first quarter of 2019,
3 Hawaii's foreclosure timeline from the first public notice to
4 the end of the process took 1,565 days on average. This period
5 of the foreclosure process sometimes results in a situation
6 known as a zombie foreclosure, where a homeowner moves out after
7 foreclosure has been initiated but before the foreclosure is
8 completed or the title to the property is transferred to the new
9 owner after sale.

10 In zombie foreclosure situations, because the homeowner is
11 not occupying the property and the foreclosing party or
12 prevailing purchaser cannot occupy the home due to not having
13 title to the property, the property often falls into disrepair.
14 Squatters may start to illegally occupy the home and the
15 property may become a center of criminal activity. As a result,



1 zombie foreclosure properties decrease the value of the home and
2 the surrounding properties.

3 The legislature finds that the use of unoccupied foreclosed
4 residential properties as rental properties during the period
5 between when a homeowner receives notice of a foreclosure action
6 and the transfer of title to the prevailing purchaser after a
7 foreclosure auction will mitigate the property depreciation and
8 hazards that are associated with unoccupied homes.

9 The purpose of this Act is to prevent residential property
10 subject to judicial foreclosure actions from becoming unoccupied
11 by:

12 (1) Requiring a foreclosing party to submit a plan to
13 prevent long-term vacancy of the foreclosed property
14 at the commencement of the judicial foreclosure
15 action;

16 (2) Making the homeowner liable for a fine if the
17 homeowner fails to occupy or rent the foreclosed
18 property within a specified time after the notice of
19 foreclosure has been served;



1 (3) Making a foreclosing party liable for a fine if the
2 public sale of a foreclosed property is postponed or
3 canceled;

4 (4) Making a prevailing purchaser liable for a fine if the
5 prevailing purchaser fails to transfer title of the
6 foreclosed property within a specified time after the
7 foreclosure sale; and

8 (5) Establishing the minimum conditions under which a
9 renting party may rent a foreclosed property to a
10 tenant.

11 SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended
12 by adding a new section to be appropriately designated and to
13 read as follows:

14 "§46- Regulation, enforcement, and use of fines for
15 unoccupied residential properties subject to judicial
16 foreclosure. (a) Notwithstanding any law to the contrary, each
17 county shall adopt and provide for the enforcement of ordinances
18 regulating the fines imposed on the homeowner, foreclosing
19 party, or prevailing purchaser of an unoccupied foreclosed
20 property and the regulation of rentals of foreclosed properties
21 pursuant to part of chapter 667.



1 (b) All proceeds of the fine collected pursuant to this
2 section and part of chapter 667 shall be used by the county
3 in the following priority:

4 (1) To reimburse the county for all administrative costs
5 of regulating and enforcing the collection of the
6 finances;

7 (2) To improve the infrastructure in the residential
8 subdivision within which the foreclosed property is
9 located; and

10 (3) To be deposited into a county affordable housing fund,
11 or to be used for county homeless services, including
12 demolishing or securing a foreclosed property from the
13 owner if the property is deemed uninhabitable.

14 (c) For the purposes of this section:

15 "Foreclosed property" shall have the same meaning as in
16 section 667-A.

17 "Residential property" shall have the same meaning as in
18 section 667-A."

19 SECTION 3. Chapter 667, Hawaii Revised Statutes, is
20 amended by adding two new sections to part IA to be
21 appropriately designated and to read as follows:



1 "§667- Plan to prevent long-term vacancies. At the
2 commencement of any action for judicial foreclosure, the
3 foreclosing party shall present the court with a plan to
4 demolish, sell, or rent the foreclosed property within three
5 months of foreclosure. The plan may include a transitional
6 housing agreement provided by the courts or a transitional
7 housing agreement entered into between the foreclosing party and
8 state homeless coordinator.

9 §667- Delay of foreclosure action; plan for occupancy.
10 Prior to granting a motion that lengthens the foreclosure
11 period, the court shall ensure that the party seeking the delay
12 of action has submitted a plan to ensure occupancy of the
13 property within three months of foreclosure. The plan may
14 include a rental agreement for transitional housing with the
15 governor's coordinator on homelessness."

16 SECTION 4. Chapter 667, Hawaii Revised Statutes, is
17 amended by adding a new part to be appropriately designated and
18 to read as follows:

19 "PART
20 JUDICIAL FORECLOSURE OF UNOCCUPIED RESIDENTIAL PROPERTIES
21 §667-A Definitions. For the purposes of this part:



1 "Foreclosed property" means an unoccupied residential
2 property subject to a judicial foreclosure action pursuant to
3 part IA of this chapter.

4 "Rental agreement" means all agreements, written or oral,
5 which establish or modify the terms, conditions, rules,
6 regulations, or any other provisions concerning the use and
7 occupancy of a foreclosed property by a tenant.

8 "Renting party" means the homeowner, foreclosing party, or
9 prevailing purchaser who rents the foreclosed property to a
10 tenant pursuant to this part.

11 "Residential property" means a one- or two-family
12 unattached building designed or used exclusively for residential
13 occupancy and located on a parcel zoned for residential use, and
14 subject to judicial foreclosure.

15 "Security deposit" means money deposited by or for the
16 tenant with the renting party to be held by the renting party
17 to:

- 18 (1) Remedy tenant defaults for accidental or intentional
19 damages resulting from failure to maintain the
20 foreclosed property, pay rent due, or return all keys



1 furnished by the renting party at the termination of
2 the rental agreement;

3 (2) Clean the foreclosed property or have it cleaned at
4 the termination of the rental agreement so as to place
5 the condition of the foreclosed property in as fit a
6 condition as that which the tenant entered into
7 possession of the foreclosed property;

8 (3) Compensate for damages caused by a tenant who
9 wrongfully quits the foreclosed property;

10 (4) Compensate for damages caused by any pet animal
11 allowed to reside in foreclosed property pursuant to
12 the rental agreement; and

13 (5) Compensate the renting party for moneys owed by the
14 tenant under the rental agreement for utility service
15 provided by the renting party but not included in the
16 rent.

17 "Tenant" means any person who occupies a foreclosed
18 property under a rental agreement.

19 **§667-B Imposition of fine.** (a) A fine of \$1,000 per day
20 shall be imposed on a foreclosed property homeowner that does
21 not occupy or rent the foreclosed property; provided that:



1 (1) The fine shall not start to accrue until days
2 after the homeowner is served with a notice of
3 judicial foreclosure on the foreclosed property
4 pursuant to section 667-5.5, and not including the day
5 that the notice was served; and

6 (2) The fine shall cease to accrue against the foreclosed
7 property homeowner:

8 (A) If the foreclosing party postpones or cancels the
9 foreclosure sale; or

10 (B) Upon the date of the public sale.

11 (b) A fine of \$1,000 per day shall be imposed on the
12 foreclosing party if the public sale is postponed or canceled
13 and the foreclosed property is unoccupied; provided that:

14 (1) The fine shall not start to accrue until days
15 after the date of the postponed or canceled public
16 sale, and not including the day of the public sale;
17 and

18 (2) The fine shall cease to accrue against the foreclosing
19 party:

20 (A) Upon the date a tenant is determined to have
21 wrongfully quit the foreclosed property pursuant



1 to section 667-E(d); provided that the fine shall
2 begin to accrue days after the determination
3 if the foreclosed property is not occupied by
4 that date; or

5 (B) Upon the date of the public sale.

6 (c) A fine of \$1,000 per day shall be imposed on the
7 prevailing purchaser in the public sale of a foreclosed property
8 if the conveyance document to transfer title to the prevailing
9 purchaser is not recorded within days of the public sale
10 and the foreclosed property is unoccupied; provided that:

11 (1) The fine shall not start to accrue until days
12 after the date of the public sale; and

13 (2) The fine shall cease to accrue against the purchasing
14 party on the date that the conveyance document is
15 recorded.

16 (d) If a renting party fails to put a tenant into
17 possession of the foreclosed property on the day and in the
18 condition agreed upon in the rental agreement, fines shall start
19 to immediately accrue against the renting party. If a tenant
20 fails to take possession of the foreclosed property on the day
21 agreed upon in the rental agreement, the fine shall not start to



1 accrue against the renting party until days after the date
2 that the tenant agreed to take possession of the foreclosed
3 property.

4 (e) No fines shall accrue pursuant to this section when
5 the foreclosed property is occupied. If a foreclosed property
6 becomes unoccupied after a period of occupancy, the fines shall:

7 (1) Be reinstated and start to accrue days after the
8 foreclosed property becomes unoccupied after a period
9 of occupancy, except as provided in paragraph (2);

10 (2) Be reinstated and start to accrue days after the
11 foreclosed property becomes unoccupied due to a tenant
12 wrongfully quitting the residential property; and

13 (3) Accrue against the homeowner, foreclosing party, or
14 prevailing purchaser as provided in subsection (a),
15 (b), or (c), respectively.

16 (f) No fines shall accrue pursuant to this section when
17 the foreclosed property is uninhabitable or poses a threat to
18 health or safety, as determined by the county or an agency of
19 the State.

20 §667-C County regulation, enforcement, and use of the
21 fine. The counties shall adopt legislation to:



1 (1) Regulate and enforce the imposition of the fine as
2 provided in section 667-B; and

3 (2) Require that the proceeds of the fine, after the
4 county has been reimbursed for all administrative
5 costs of regulating and enforcing the fine, be used
6 for the infrastructure development of the residential
7 subdivision within which the foreclosed property is
8 located.

9 **§667-D Exemption from the residential landlord-tenant**
10 **code.** Chapter 521 shall not apply to any residential agreement
11 entered into between a renting party and tenant pursuant to this
12 part; provided that the renting party has not rented the
13 foreclosed property to the tenant for longer than days;
14 provided further that the foreclosed property has not been
15 rented to any tenants for longer than cumulative days.

16 **§667-E Rent; security deposit.** (a) The renting party and
17 tenant may agree to any consideration, not otherwise prohibited
18 by law, as rent. Rents shall be payable at the time and place
19 agreed to by the parties. Where the rental agreement provides
20 for a late charge payable to the renting party for rent not paid



1 when due, the late charge shall not exceed eight per cent of the
2 amount of rent due.

3 (b) The renting party may require, as a condition of a
4 rental agreement, a security deposit to be paid by or for the
5 tenant in an amount not in excess of a sum equal to one month's
6 rent. No part of the security deposit shall be construed as
7 payment of the last month's rent by the tenant, unless mutually
8 agreed upon, in writing, by the renting party and tenant.

9 (c) The renting party may require, as a condition of
10 rental agreement, a security deposit in an amount agreed upon by
11 the renting party and tenant to compensate the renting party for
12 any damages caused by any pet animal allowed to reside in the
13 foreclosed property pursuant to the rental agreement; provided
14 that the additional security deposit amount for a pet animal
15 under this subsection:

16 (1) Shall not be required:

17 (A) From any tenant who does not have a pet animal
18 that resides in the premises; or

19 (B) For an assistance animal that is a reasonable
20 accommodation for a tenant with a disability
21 pursuant to section 515-3; and



1 (2) Shall be in an amount not in excess of a sum equal to
2 one month's rent.

3 No part of the security deposit agreed upon by the renting party
4 and tenant to compensate the renting party for any damages
5 caused by any pet animal allowed to reside in the foreclosed
6 property shall be construed as payment of the last month's rent
7 by the tenant, unless mutually agreed upon, in writing, by the
8 renting party and tenant.

9 (d) For the purposes of this section, if a tenant is
10 absent from the foreclosed property for a continuous period of
11 twenty days or more without written notice to the renting party,
12 the tenant shall be deemed to have wrongfully quit the
13 foreclosed property; provided that the tenant shall not be
14 considered to be absent from the foreclosed property without
15 notice to the renting party during any period for which the
16 renting party has received payment of rent. With respect to
17 such a tenant, the renting party may retain the entire amount of
18 any security deposit the renting party has received from or on
19 behalf of such tenant.

20 **§667-F Foreclosed property used as a vacation rental;**
21 **subject to fines.** A foreclosed property shall not be considered



1 to be occupied if it is used as a vacation rental. Fines
2 pursuant to section 667-B shall accrue against the homeowner,
3 foreclosing party, or prevailing purchaser if the foreclosed
4 property is used as a vacation rental.

5 **§667-G Tenant's remedies for failure by renting party to**
6 **supply possession.** (a) If the renting party fails to put the
7 tenant into possession of the foreclosed property in the agreed
8 condition at the beginning of the agreed term:

9 (1) The tenant shall not be liable for the rent during any
10 period the tenant is unable to enter into possession;

11 (2) At any time during the period the tenant is unable to
12 enter into possession, the tenant may notify the
13 renting party that the tenant has terminated the
14 rental agreement; and

15 (3) The tenant shall have the right to recover damages in
16 the amount of reasonable expenditures necessary to
17 secure adequate substitute housing, the recovery to be
18 made either by action brought in the district court or
19 by deduction from the rent upon submission to the
20 renting party of receipts totaling at least:

21 (A) The amount of abated rent; plus



1 (B) The amount claimed against the rent.

2 (b) In any district court proceeding brought by the tenant
3 under this section, the court may award the tenant substitute
4 housing expenditures, reasonable court costs, and attorney's
5 fees.

6 **§667-H Medical cannabis; tenant use; eviction.** Any
7 provision in a rental agreement allowing for eviction of a
8 tenant who has a valid certificate for the medical use of
9 cannabis in any form is void unless the rental agreement allows
10 for eviction for smoking tobacco and the tenant uses medical
11 cannabis by means of smoking.

12 **§667-I Early termination of tenancy; change of locks;**
13 **victims of domestic violence.** (a) A tenant may terminate a
14 rental agreement without penalty or fees for early termination
15 or liability for future rent if the tenant or an immediate
16 family member of the tenant residing at the foreclosed property
17 has been the victim of domestic violence during the ninety days
18 preceding the date the notice of early termination was provided
19 to the renting party. The notice shall be given at least
20 fourteen days prior to the early termination date specified in



1 the notice, which shall be no more than one hundred four days
2 from the date of the most recent act of domestic violence.

3 Subject to subsections (b) and (c), if a tenant of a
4 foreclosed property or an immediate family member of the tenant
5 has been the victim of domestic violence and the tenant does not
6 elect to be released from the rental agreement, the tenant may
7 require the renting party to change the locks to the foreclosed
8 property by submitting a request to the renting party to do so.

9 (b) Within three days of the receipt of the request in
10 subsection (a), the renting party shall change the locks at the
11 tenant's expense. If the renting party fails to act within the
12 three-day period, the tenant may change the locks without the
13 renting party's permission and shall give the renting party a
14 key to the new locks.

15 (c) If the person who committed domestic violence against
16 the tenant or immediate family member of the tenant is also a
17 party to the rental agreement, the locks shall not be changed
18 unless there is a court order requiring the person to vacate the
19 foreclosed property and a copy of the order has been furnished
20 to the renting party.



1 (d) The tenant shall not be required to pay any additional
2 rent, fees, or security deposit because of the exclusion of the
3 person who committed domestic violence from the foreclosed
4 property.

5 (e) The person who committed domestic violence against the
6 tenant or immediate family member of the tenant shall not be
7 entitled to any damages or other relief against the renting
8 party or the tenant who in good faith complies with this
9 section.

10 §667-J Court order to vacate; domestic violence. (a) If
11 a court of competent jurisdiction, in an action relating to
12 domestic violence, has ordered the person who committed domestic
13 violence against the tenant or immediate family member of the
14 tenant to vacate the foreclosed property, upon issuance of the
15 order, neither the renting party nor the tenant shall have any
16 duty to:

17 (1) Allow the person access to the foreclosed property,
18 unless the person is accompanied by a law enforcement
19 officer; or

20 (2) Provide the person with keys to the foreclosed
21 property.



1 (b) If the person is a party to the rental agreement, then
2 upon issuance of the court order requiring the person to vacate
3 the foreclosed property, the person's interest in the tenancy
4 shall terminate, and the renting party and remaining tenant
5 shall be entitled to any actual damages resulting from that
6 termination.

7 (c) Any remaining tenant shall not be required to pay any
8 additional rent, fees, or security deposit because of the
9 termination of the person who committed domestic violence's
10 interest as a tenant of the foreclosed property.

11 **§667-K Sale or rental of property; mandatory price**
12 **reduction.** An unoccupied foreclosed property that has been
13 listed for sale or rent for thirty days shall be subject to a
14 mandatory price reduction every sixty days until the property is
15 sold or rented.

16 **§667-L Other provisions applicable.** All of the provisions
17 of chapter 667 not inconsistent with this part and which may
18 appropriately be applied to the persons, circumstances, and
19 situations in a judicial foreclosure of an unoccupied
20 residential property subject to this part shall be applicable to
21 the rights and obligations imposed by this part."



H.B. NO. 1823

1 SECTION 5. This Act does not affect rights and duties that
 2 matured, penalties that were incurred, and proceedings that were
 3 begun before its effective date.

4 SECTION 6. If any provision of this Act, or the
 5 application thereof to any person or circumstance, is held
 6 invalid, the invalidity does not affect other provisions or
 7 applications of the Act that can be given effect without the
 8 invalid provision or application, and to this end the provisions
 9 of this Act are severable.

10 SECTION 7. In codifying the new sections added by section
 11 4 of this Act, the revisor of statutes shall substitute
 12 appropriate section numbers for the letters used in designating
 13 the new sections in this Act.

14 SECTION 8. New statutory material is underscored.

15 SECTION 9. This Act shall take effect on July 1, 2020.

16

INTRODUCED BY:

Myra A. Ah
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JAN 16 2020



H.B. NO. 1823

Report Title:

Unoccupied Residential Property; Zombie Foreclosure; Judicial Foreclosure

Description:

Mandates a foreclosing party to submit a plan to prevent long-term vacancy at the start of the foreclosure action. Imposes fines on a homeowner, foreclosing party, or prevailing purchaser in foreclosure actions when a vacant residential property subject to foreclosure remains unoccupied during the foreclosure process. Establishes conditions under which a foreclosed property may be rented.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

